IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 26TH FEBRUARY 2007 / 7TH PHALGUNA 1928

WP(C).No. 29819 of 2006(T)

PETITIONER:

P.S. CHERIAN,
ADVOCATE, PUTHAN VEEDU, CHALACODE, PUNALUR.

BY ADV. SRI.SIBY MATHEW
SRI.PHILIP J.VETTICKATTU

RESPONDENTS:

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1. THE STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
TOWN PLANNING LOCAL SELF GOVERNMENT DEPARTMENT,
SECRETARIAT, TRIVANDRUM.

2. THE CHIEF TOWN PLANNER, TRIVANDRUM.

3. THE TOWN PLANNING OFFICER, KOLLAM.

4. PUNALUR MUNICIPALITY,
PUNALUR, REPRESENTED BY ITS SECRETARY.

BY G.P.SMT.T.B.RAMANI
BY ADV. SRI.B.KRISHNA MANI (R4)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C.KURIAKOSE, J.

W.P.(C)NO.29819 of 2006

Dated this 26th day of February , 2007

JUDGMENT

The application for building permit submitted by the petitioner was rejected by the Municipality by Ext.P3 order. The reasons stated in Ext.P3 order are that the plot upon which the petitioner intends to construct the building is included in the approved DTP scheme and that there is a proposal to acquire the property for public and semi public utility purposes.

2. A detailed counter affidavit has been filed by the Municipality justifying Ext.P3, wherein it is stated that the contention of the petitioner that the scheme has not been implemented since its approval in 1985 is absolutely wrong and that the scheme is being implemented stage by stage.

3. Heard both sides. The learned counsel would address me elaborately on the basis of the rival pleadings. I find force in the submission of the learned counsel for the petitioner that the issue is covered by a judgment of the Division Bench of this court in

Padmini v. State of Kerala (1999 (3) KLT 465) and the judgment of the Supreme Court in **S.Jethamalani and others v. State of Maharashtra and others (2005) 11 Supreme Court 222.**

4. Under the above circumstances, the writ petition will stand allowed. Ext.P3 is quashed and the Municipality is directed to consider Ext.P1 plan and the application for building permit submitted along with the same and pass appropriate orders. The pendency of the inclusion of the property in the public and semi public utility area in the DTP scheme and the proposal for acquiring the property shall not be a ground for rejection. The above direction however, will be conditional that the petitioner submits an affidavit to the Municipality in which he will state clearly that in case the Municipality initiates proceedings for acquisition (by issuing at least notification under Section 4 (1) of the Land Acquisition Act) of any portion of the petitioner's property, within one year of issue of permit he will surrender possession of the property and the building constructed thereon without claiming any compensation. Once the affidavit as directed above is submitted by the petitioner, if the plan is

otherwise in order, the same will be approved by the Municipality. It is however, made clear that this judgment will not stand in the way of the Municipality or the first respondent State acquiring the petitioner's property including building for any genuine public purpose, even after one year in which case he will be entitled for an adequate compensation. Decision on the permit application should be taken by the Municipality within one month of receiving a copy of this judgment. If the Municipality is of the opinion that there is some infirmity in the plan submitted by the petitioner other than the proposal to acquire the property and inclusion of the property as public utilities on the DTP scheme, the Municipality will issue notice to the petitioner herein and hear him before orders are passed.

PIUS C.KURIAKOSE
Judge

dpk